IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 974 OF 2003

IN

SUM. SUIT NO. 37 OF 2003

TTK Healthcare Limited .. Plaintiffs.

vs.

Mr. Bhavesh Chheda .. Defendant.

Mr. R.P. Pavaskar i/by Warerkar & Warerkar

for plaintiffs.

Ms. Preeti Gada i/by Sudhir Shah & Associates

for defendant.

CORAM : S.U. KAMDAR, J.

DATE : 16th August, 2005.

P.C.

. The present suit is filed on the basis of three invoices, one for Rs. 1,47,690.00 another for Rs. 10,799.00 and the third is for Rs. 8,608.00. After adding interest and deducting certain payments, the claim is made for an aggregate sum of Rs. 2,01,597.04. It is an admitted position that in fact a cheque for the sum of Rs.1,47,690/- has been paid by the defendant to the plaintiff herein.

However, the learned advocate for the plaintiffs contends that the said cheque has been adjusted against certain earlier outstanding dues and not towards the invoice which is the subject matter of the suit. However, the defendant has produced before me an acknowledgement of the cheque of the defendant which expressly states that the cheque is paid towards this invoice and not in respect of any other invoices. Having tendered the payment towards the particular debt, the plaintiff is duty bound to adjust the said debt and cannot adjust any other debt. Apart therefrom the plaintiff is seeking to deduct an amount of Rs. 48,406.97 from the invoice and the amount of Rs. 1,47,690/- on the purported ground that the said represents return of the goods. However, it admits that the said goods which are returned do not pertain to the said invoice. Similar is the situation in respect of the other two invoices. However, the learned advocate for the plaintiff states that in respect of the other two invoices of Rs. 20,658.00 and Rs. 8,608.00 the defendant has returned certain goods of which credit has not been given. At this juncture, I am of the opinion that the defendant should deposit in this Court a sum of Rs. 25,000/- towards the suit claim. On such deposit of Rs. 25,000/- being made, within a period of 4 weeks from today, the Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from

today. Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.